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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Christine Whalen, *et al.*,

Plaintiffs,

vs.

The Kroger Co., Albertsons Companies, Inc.,
and Cerberus Capital Management, L.P.,

Defendants.

Case No. 3:23-cv-00459-VC

**DECLARATION OF DANIEL B.
ASIMOW IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
AND IN OPPOSITION TO PLAINTIFFS'
MOTION TO LIFT STAY AND MOTION
FOR SUMMARY JUDGMENT.**

Judge: Hon. Vince Chhabria
Courtroom: Courtroom 4 – 17th Floor

I, Daniel B. Asimow, declare, as follows:

1. I am over 18 years of age. I am a partner at the law firm Arnold & Porter Kaye Scholer LLP, counsel for Defendant The Kroger Co. (“Kroger”) in this matter.
2. I have personal knowledge of the matters set forth in this declaration and am competent to testify about them. I submit this declaration in support of Kroger and Albertsons’ Motion to Dismiss and Opposition to Plaintiffs’ Motion to Lift Stay and Motion for Summary Judgment.
3. Attached as **Exhibit A** is a true and correct copy of a December 13, 2024 letter from Kroger’s counsel to the Federal Trade Commission’s (“FTC”) Premerger Notification Office formally withdrawing Kroger’s Premerger Notification and Report Form.
4. Attached as **Exhibit B** is a true and correct copy of a December 13, 2024 letter from the Albertsons Companies, Inc.’s counsel to the FTC’s Premerger Notification Office formally withdrawing Albertsons Companies, Inc.’s Premerger Notification and Report Form.
5. Attached as **Exhibit C** is a true and correct copy of a December 16, 2024 Joint Motion to Dismiss filed by Kroger and Albertsons Companies, Inc. in *In the Matter of The Kroger Co. and Albertsons Companies, Inc.*, FTC Docket No. 9428.
6. Attached as **Exhibit D** is a true and correct copy of Albertsons Companies, Inc.’s SEC Form 8-K dated December 10, 2024.
7. Attached as **Exhibit E** is a true and correct copy of Kroger’s SEC Form 8-K dated December 11, 2024.
8. Attached as **Exhibit F** is a true and correct copy of the public version of the Verified Complaint in *Albertsons Companies Inc. v. The Kroger Co.*, No. 2024-1276-LWW (Del. Ch. Dec. 14, 2024).
9. Attached as **Exhibit G** is a true and correct copy of a November 15, 2023 letter from Kroger’s counsel to Plaintiffs’ counsel enclosing documents submitted by Kroger to the FTC in response to the FTC’s Second Request.

10. Attached as **Exhibit H** is a true and correct copy of a November 15, 2023 letter from Albertsons Companies, Inc.'s counsel to Plaintiffs' counsel enclosing documents submitted by Albertsons Companies, Inc. to the FTC in response to the FTC's Second Request.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 24, 2024

/s/ Daniel B. Asimow

Daniel B. Asimow